

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13896 of 2012

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Vijay Kumar Sinha S/O Late Rameshwar Prasad R/O House Of Late R.N. Dewedi Opposite Maheshwar Kunj Apartment East Boring Canal Road, Patna.

.... Petitioner/s

Versus

Smt. Anamika W/O Sunil Kumar R/O Bhabha Colony Hanuman Nagar Dusadhi Pakari, P.S. Patrakar Nagar At Present Residing At House No. 36 Road No. 10 Indrapuri, P.S. - Patliputra, Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Subodh Kumar Jha, Adv.
Mr. Sarveshwar Tiwary, Adv.
For the Respondent/s : Mr. Ranjan Kumar Sinha, Adv.
Mrs. Seema, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6 12-04-2016 Heard learned counsel for the petitioner as well as learned counsel for the respondent.

Till today the marriage amongst the spouses is subsisting. However, as the dispute arose amongst the spouses which ultimately resulted in serious litigation amongst the parties, Matrimonial Case No.256 of 2009 (divorce) has been filed at the end of petitioner/husband on so many grounds including castigating upon character of his wife as, one Sunil Kumar has been identified to be her paramour though not impleaded as a party (as per Annexure-1) and in the aforesaid background pleaded that for the last eighteen years wife happens to be leading the life of adultery. Marriage is said to be of the year 1989. After



appearance of wife, she had filed petition under Section 24 of the Hindu Marriage Act whereupon parties were heard and order was passed on 08.09.2011 against which CWJC No.269 of 2012 as well as CWJC No.19237 of 2011 were respectively drawn up at the behest of both the parties either for annulling or for enhancing the quantum of ad-interim maintenance which were disposed of vide order dated 29.02.2012 (Annexure-6). Then a second round of litigation begins with filing a petition on behalf of applicant/petitioner asking for DNA test with the son whom he stated to be from paramour. In reply to counter affidavit, Annexure-7 has been incorporated which happens to be a petition filed by wife before the Mahila Helpline wherein she had stated that she is living separately from her husband since 1995 along with her son. The half part has been admitted by the petitioner that she, even in the year 1995, was away from the society of the husband but, did not accept the disclosure relating to presence of son.

As after hearing both the parties the learned lower court had refused to accede with the prayer vide order dated 23.10.2010 made on behalf of petitioner, hence this petition.

Without adverting to the merit of the case as thorough investigation and interpretation will affect adversely to

the interest of either of the party, for the present it happens to be suffice to incorporate that in terms of Section 112 of the Evidence Act presumption, though rebuttable lies in favour of wife which the petitioner/husband, in case intends to rebut, substantiate the same by a cogent, reliable evidence. Unless and until the presumption in terms of Section 112 of the Evidence Act is found rebutted to that extent then and then only, there should be proper consideration of prayer of the petitioner for DNA test otherwise would not have.

The learned counsel for the petitioner has relied upon ***Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik and another*** reported in ***2014(1) PLJR 364 (SC)*** . Basically, the aforesaid judgment did not support the stand of the petitioner in the background of the fact that in the aforesaid judgment, as it reveals an order of DNA test was already directed by the co-ordinate bench and so, its consequences were perceived, subsequently.

Accordingly, I do not find any cogent reason to interfere with the order impugned. Petition is rejected.

(Aditya Kumar Trivedi, J.)

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